Filed 6/30/16 P. v. Perez CA5



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICIA ANN PEREZ et al.,

Defendants and Appellants.

F069418

(Super. Ct. No. F12907515)

# OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Houry A. Sanderson, Judge.

Randy S. Kravis, under appointment by the Court of Appeal, for Defendant and Appellant Patricia Ann Perez.

Robert D. Bacon, under appointment by the Court of Appeal, for Defendant and Appellant David Barrera.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Rebecca Whitfield, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendants Patricia Ann Perez and David Barrera were jointly charged with the murder of Lawrence Ballesteros (Pen. Code,[1] § 187, subd. (a)). The information further alleged Perez and Barrera personally used a deadly and dangerous weapon in the commission of the murder (§ 12022, subd. (b)(1)); Barrera had two prior "strike" convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), had a prior serious felony conviction (§ 667, subd. (a)(1)), and had served a prior prison term (§ 667.5, subd. (b)); and Perez had served two prior prison terms (§ 667.5, subd. (b)). Defendants admitted all special allegations except the deadly and dangerous weapon allegation. Later, the trial court struck the deadly and dangerous weapon allegation at the request of the prosecution.

Following a trial, the jury convicted defendants of first degree murder. Barrera was sentenced to 25 years to life, tripled to 75 years to life pursuant to the Three Strikes Law (§§ 667, subds. (d) & (e)(2), 1170.12, subds. (b) & (c)(2)), plus five years for his prior serious felony conviction. Perez was sentenced to 25 years to life plus one year for one of her prior prison terms.[2]

Perez and Barrera filed separate appeals. They jointly contend the trial court improperly instructed the jury on flight, failed to instruct the jury on voluntary manslaughter as a lesser included offense, failed to instruct the jury on aider and abettor liability, and failed to advise them and obtain waivers of their *Boykin*[3]-*Tahl*[4] rights before they admitted the special allegations. Perez separately argues the evidence did not support her conviction.

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1 Unless otherwise indicated, subsequent statutory citations refer to the Penal Code.

2 According to minute orders, the trial court also imposed one year for Barrera's prior prison term and one year for Perez's other prior prison term but struck these punishments. However, neither the reporter's transcript of sentencing nor the abstracts of judgment corroborate these pronouncements.

3 *Boykin v. Alabama* (1969) 395 U.S. 238 (*Boykin*).

4 *In re Tahl* (1969) 1 Cal.3d 122 (*Tahl*).

For the reasons set forth in this opinion, we find substantial evidence supported Perez's murder conviction, there were no instructional errors, and the trial court erroneously failed to advise defendants and obtain waivers of their *Boykin-Tahl* rights. Therefore, we affirm the judgments in part and reverse the judgments in part.

## STATEMENT OF FACTS

### I. Prosecution's case.

In the early morning of September 19, 2012, Tomas Quillopo, Jr., a motor sergeant, encountered a deceased male lying near the front gate of the United States Army Reserve Center near the Fresno Chandler Executive Airport. At approximately 6:25 a.m., Officer Cory Hastings arrived on the scene. Hastings noted the deceased was dressed only in his underwear. He observed dried blood on the head and underneath the body. Leaves lying next to the body did not match the foliage in the vicinity. Fingerprint analysis confirmed the deceased was Ballesteros. Surveillance footage dated September 18, 2012, showed a pickup truck stopping near the gate at 10:46 p.m. and leaving less than a minute later.

About an hour after Quillopo came across Ballesteros's body, Officer Brian Martens was dispatched to an alley near the intersection of Tuolumne Street and B Street to investigate reported suspicious activity. Martens found a bloody mattress, bedding, and clothes, including khaki pants. A wallet retrieved from the pants contained Ballesteros's state identification card. DNA testing linked the blood to Ballesteros. Motion-activated surveillance footage from a building adjacent to the alley showed a vehicle arriving on September 18, 2012, at 11:03 p.m.

At or around 5:15 p.m., Detectives Antonio Rivera and Ray Villalvazo visited 117 East Stanislaus Street, Ballesteros's last known address on record. There, they met homeowner Bertha Ortega and her 13-year-old daughter A.J.[5] Perez, Ortega's girlfriend

[5] We identify the minor by her initials in accordance with the Supreme Court's policy regarding protective nondisclosure.

and housemate, was not in. Ortega told the detectives Ballesteros used to live in the detached garage, which stood 20 to 25 feet behind the house. Inside the garage, Rivera spotted blood spatter on a wall near a bed, which was missing its mattress. DNA testing linked the blood to Ballesteros. Latent fingerprints extracted from a bag of sunflower seeds in the garage belonged to Barrera. Along the driveway on the east side of the house, the detectives noticed drag marks, which tested positive for blood. In addition, the leaves of a small bush on the left side of the driveway matched those found beside Ballesteros's body at the Army Reserve Center. Rivera informed Ortega that Ballesteros was murdered. Ortega was shocked.

At some point during the visit, Villalvazo interviewed A.J. in her bedroom, which bordered the driveway. According to Villalvazo, A.J. stated she saw Ballesteros walking to the garage on September 18, 2012, at around 3:00 p.m. Sometime after 6:30 p.m., Ortega, Perez, and Barrera arrived in Barrera's pickup truck. Ortega entered the house, but Perez and Barrera remained outside. At approximately 9:30 p.m., A.J. told Ortega that Perez and Barrera "had left . . . ." About an hour later, A.J. was awakened by the sound of dogs barking. She went to the window to yell at the dogs and saw Perez and Barrera next to Barrera's truck, which had been backed into the driveway. A.J. went back to bed and heard the truck leave 10 minutes later. She did not hear Perez enter the house.[6]

[6] By contrast, A.J. testified Ortega and Barrera brought Perez, who was drunk, into the house sometime between 6:00 and 6:30 p.m. Afterwards, Barrera left. At around 9:00 p.m., A.J. saw Barrera and another person, whom she could not identify, next to Barrera's truck. She was certain the second person was not Perez because the latter had already fallen asleep.

Sometime before 6:00 p.m., Perez arrived at the house on a motorized bicycle. Neither Rivera nor Villalvazo perceived any signs of intoxication.[7] According to Villalvazo, Perez laughed when she was told about Ballesteros's death.

Dr. Michael Chambliss, a forensic pathologist, conducted an autopsy on September 20, 2012. Chambliss counted 58 wounds that were inflicted by a single-edge blade[8]: 12 stab wounds on the front of the chest wall, 11 stab wounds on the side of the chest wall, 17 stab wounds on the back of the left side, eight stab wounds on top of the left shoulder, nine stab wounds on the left arm, and a single incised wound on the left forearm. The incised wound was a defense wound. Ligature marks encircled the neck. Chambliss noted various abrasions on the back and head. He opined the back abrasions were indicative of dragging while the head abrasion was attributable to a fall or other impact. Chambliss concluded the cause of death was multiple stab wounds damaging the left lung, kidney, spleen, and pancreas. He could not determine the time of death due to the corpse's protracted exposure to the environment.

Meanwhile, the police retrieved Barrera's truck. The tailgate, bed, rail, wheel well, steering wheel, ignition area, and key were stained with blood. DNA testing linked the blood on the tailgate to Ballesteros and the blood on the steering wheel to both Ballesteros and Barrera. Latent fingerprints extracted from the truck belonged to Barrera and Ortega.

On September 22, 2012, Ortega was arrested and questioned at police headquarters by Rivera and Villalvazo. She stated she and Perez's sister had asked Perez "what happened" and Perez replied she "didn't know anything" and "didn't do anything." When Villalvazo inquired as to whether Ortega believed Perez, Ortega said she did not.

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[7] By contrast, Ortega testified Perez was so drunk that Rivera had to steady the bicycle to prevent her from toppling over.

[8] Chambliss testified the wounds "could be produced by one knife, or . . . two knives with the same characteristics."

In addition, according to Rivera, Ortega related she entered her home and left Perez and Barrera outside on the evening of September 18, 2012, because "she d[id]n't like to be around them drinking." Although Perez was sleeping next to her on the morning of September 19, 2012, Ortega did not know when Perez came to bed.[9] Ortega was eventually released.

At trial, Ortega testified she lived with Perez at 117 East Stanislaus Street. In the spring of 2012, Perez brought Ballesteros, a homeless friend, to the house and convinced Ortega to rent the detached garage to him. About a month after Ballesteros moved in, federal marshals stopped by the residence several times attempting to contact him. On one occasion, a cameraman accompanied the marshals. To halt any further visits, Perez told Ballesteros to speak to the officers. Then, sometime in the summer of 2012, Ortega watched a television newscast that identified Ballesteros as a sex offender and aired footage of Ballesteros and Perez at the house. She informed Perez about the newscast. Thereafter, Perez told Ballesteros to move out. Ortega last saw Ballesteros on September 14, 2012, inside the house, where Perez fed him, ironed his clothes, cut his hair, and clipped his nails. He left that night after taking a shower.

On the afternoon of September 18, 2012, Ortega and Perez attended a child's birthday party at the home of Michelle Gutierrez.[10] A few hours before the party, Ortega

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**9** By contrast, Ortega testified she and Barrera brought Perez, who was drunk, into the couple's bedroom. After using the bathroom, Barrera left. Thereafter, Ortega made dinner and fed Perez. Perez eventually passed out. Sometime after 9:00 p.m., Ortega heard A.J. yelling at some dogs and told her to be quiet because Perez was sleeping. Between 9:30 and 10:00 p.m., Ortega fell asleep. The following morning, at 5:30 a.m., she woke up next to Perez. Ortega noticed Perez was still "undressed" "the same way."

As for her prior statement that she did not believe Perez, Ortega testified, "[The detectives] asked me . . . if I believed she didn't know anything about it. I said, no, she probably does, I said, but not that she was involved in it. That's what . . . that question was about."

**10** To avoid confusion, except for defendants, we subsequently identify individuals who share the same surname by their first names. No disrespect is intended.

saw Perez consume "three or four 32 ounces" of beer at home. Sometime before 11:00 a.m., Barrera stopped by. He and Perez drank more beer as Ortega was getting ready. Afterwards, Barrera dropped off Ortega and Perez at Perez's mother's house, where Perez's daughter Patricia "Tweety" Perez resided.[11] Ortega, Perez, Tweety, and Tweety's two children rode the bus to the intersection of Blackstone Avenue and Clinton Avenue. They walked three blocks and arrived at Michelle's house at approximately 1:00 p.m. On the way, Perez purchased two quarts of beer at a supermarket. At the party, Perez drank the beer. Barrera showed up with more beer and drank with Perez. After the party ended, Ortega asked Barrera to drive Perez to Perez's mother house because Perez was intoxicated. Meanwhile, Ortega, Tweety, and Tweety's children caught the bus. From Perez's mother's house, Barrera drove Ortega and Perez home. They arrived sometime between 6:30 and 7:00 p.m.

**II. Defense's case.**

Enrico Perez testified Perez, his mother, had a drinking problem. On many occasions, she lost consciousness after ingesting too much alcohol. On September 18, 2012, Enrico phoned Perez sometime between 8:30 and 11:00 p.m. He talked to Ortega but not to Perez.

Michelle, who had known Perez for seven years, testified Perez was loud, intoxicated, and "[not] herself" at the party. She drank alcohol and did not eat. At some point, Barrera appeared and drank with Perez. Perez was so inebriated she "couldn't even walk" and had to be assisted into Barrera's truck.

Aaron Gutierrez, Michelle's son and Tweety's fiancé, testified Perez consumed "two tall cans" of alcohol at the party sometime between 2:00 and 2:40 p.m., before he left for work. He knew Perez was drunk because she "slurred words" and told "certain

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[11] To avoid confusion, we subsequently identify Perez's daughter by her nickname Tweety. No disrespect is intended.

jokes she says only when she's intoxicated." Aaron phoned Perez at 10:00 p.m. to see whether she could still babysit his daughter the following morning. She answered the phone but was "so intoxicated" he "couldn't understand anything she was saying." Aaron once spoke to Perez about Ballesteros in the wake of the newscast. She only displayed "concern, love, [and] passion[]" for Ballesteros.

Perez testified she first met Ballesteros 10 to 15 years earlier. She considered him a friend. In June 2012, Perez happened upon Ballesteros near a pharmacy on the corner of Fresno Street and B Street. She found out he was homeless and invited him to her home for a meal and shower. A day or two later, with Ortega's consent, Perez rented the detached garage to Ballesteros for $300 per month. Sometime after Ballesteros moved in, a federal marshal named Ann stopped by the residence looking for him. When Perez inquired as to the nature of the visit, Ann told her to ask Ballesteros. The marshal left her business card after Perez said Ballesteros was out. When marshals visited a second time, Perez instructed Ballesteros, who was in, to speak to them. Ballesteros did so. Thereafter, Perez learned that a newscast identified Ballesteros as a sex offender and featured footage of the two of them at the house. She phoned Ann and expressed she "didn't appreciate . . . being on the camera." Ann advised Perez to "take it up with Channel 47." Following the newscast, Ballesteros vanished for roughly two weeks, leading Perez to believe he had moved out. In the meantime, she was pestered by community members who asked whether she "still got that child molester," which angered her "a little bit."

Perez saw Ballesteros twice more. The first time, which was at the house, she asked him about the newscast. Ballesteros claimed "there was no truth to it," the marshals were "trying to set him up for an old murder case that they were looking into," and "he was going to go and clear his name." Perez, who was satisfied with the explanation, fed Ballesteros, cut his hair, ironed his clothes, loaned him more clothes, and let him use the shower. The second and last time, which was near the corner of Fresno

Street and B Street, she asked him if he was able to "take care of that shit yet." Ballesteros said he was "trying," but "nobody [wa]s listening." He implored Perez to accompany him to the library someday to "get . . . clippings for the reason" why the marshals "were coming around." Perez agreed to do so. However, she never saw Ballesteros again.

On the morning of September 18, 2012, before going to the party, Perez drank beer at home, first alone and then with Barrera. Barrera then dropped off Perez and Ortega at Tweety's residence. Perez was already intoxicated by this point. Nonetheless, Perez, Ortega, Tweety, and Tweety's two children rode the bus to the intersection of Blackstone Avenue and Clinton Avenue. En route to Michelle's house, Perez purchased beer. She drank at the party, first alone and then with Barrera, who turned up with more alcohol. Perez could not recall how much she consumed or when she left the party. She remembered Barrera drove her to Tweety's residence and then home before it was "completely dark." Perez also remembered being helped into her bedroom, where she fell asleep.

Perez woke up the next morning with a hangover. She drank a quart of beer "to get [her] going," showered, rode her motorized bicycle to a gas station, and purchased beer. Perez finished the beer before she arrived at Tweety's residence, where she stayed for one-and-a-half to two hours. Afterwards, she went to a market and bought beer again. Perez visited her brother and drank for a "couple hours." At some point, Ortega called and told Perez to come home. Perez headed back. She "just knew that there w[ere] cops there" and attempted to sober up beforehand to no avail.

Perez denied any involvement in Ballesteros's murder.

## DISCUSSION

### I. Substantial evidence supported Perez's murder conviction.

a. *Standard of review*.

"To determine the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the prosecution to determine whether it contains [substantial] evidence that is reasonable, credible[,] and of solid value, from which a rational trier of fact could find that the elements of the crime were established beyond a reasonable doubt." (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955 (*Tripp*).) We "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) "We need not be convinced of the defendant's guilt beyond a reasonable doubt; we merely ask whether ' "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citation.]' [Citation.]" (*Tripp, supra*, at p. 955, italics omitted.)

"Before the judgment of the trial court can be set aside for insufficiency of the evidence to support the verdict of the jury, it must clearly appear that upon no hypothesis what[so]ever is there sufficient substantial evidence to support it." (*People v. Redmond, supra*, 71 Cal.2d at p. 755.) " 'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.' [Citation.]" (*People v. Lee* (2011) 51 Cal.4th 620, 632.)

"This standard of review . . . applies to circumstantial evidence. [Citation.] If the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the jury's findings, our opinion that the circumstances might also

reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citations.]" (*Tripp*, *supra*, 151 Cal.App.4th at p. 955.)

b. *Analysis.*

"Murder is the unlawful killing of a human being . . . with malice aforethought." (§ 187, subd. (a).) "A murder that is willful, deliberate, and premeditated is murder in the first degree." (*People v. Brady* (2010) 50 Cal.4th 547, 561 (*Brady*), citing § 189.) "A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. [Citations.] 'The process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . ." [Citations.]' [Citation.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

" ' "An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse." [Citation.]' " (*People v. Burney* (2009) 47 Cal.4th 203, 235.) "Direct evidence of a deliberate and premeditated purpose to kill is not required; the elements of deliberation and premeditation may be inferred from proof of such facts and circumstances as will furnish a reasonable foundation for such an inference." (*People v. Miller* (1969) 71 Cal.2d 459, 477; see *People v. Werner* (1952) 111 Cal.App.2d 264, 271 ["The mere fact that no eyewitness saw the killing . . . does not necessarily preclude a finding of deliberation and premeditation."].) " 'A reviewing court normally considers three kinds of evidence to determine whether a finding of premeditation and deliberation is adequately supported—preexisting motive, planning activity, and manner of killing—but "[t]hese factors need not be present in any particular combination to find substantial evidence of premeditation and deliberation." ' [Citation.]" (*People v. Burney*, *supra*, at

p. 235; accord, *Brady*, *supra*, 50 Cal.4th at pp. 561-562; see, e.g., *People v. Tafoya* (2007) 42 Cal.4th 147, 172 [" '[G]enerally first degree murder convictions are affirmed when (1) there is evidence of planning, motive, and a method of killing that tends to establish a preconceived design; (2) extremely strong evidence of planning; or (3) evidence of motive in conjunction with either planning or a method of killing that indicates a preconceived design to kill.' "]; *People v. Lenart* (2004) 32 Cal.4th 1107, 1127 ["[E]xecution-style killing may be committed with such calculation that the manner of killing will support a jury finding of premeditation and deliberation, despite little or no evidence of planning and motive."].) "No rule can be laid down as to the character or amount of proof necessary to show deliberation and premeditation; each case depends upon its own facts." (*People v. Eggers* (1947) 30 Cal.2d 676, 686.)

The record, which we view in the light most favorable to the prosecution, shows Perez and Ortega left their home on September 18, 2012, sometime between 11:00 a.m. and 1:00 p.m. At or around 3:00 p.m., while Perez and Ortega were still out, Ballesteros went to the detached garage. This was the last time he was seen alive. Sometime after 6:30 p.m., Perez, Ortega, and Barrera arrived at the house. Ortega then entered the house, leaving Perez and Barrera outside. At or around 9:30 p.m., A.J. noticed Perez and Barrera, who had remained outside since their arrival, were gone. At or around 10:30 p.m., A.J., who had been sleeping, woke up and saw Perez and Barrera next to Barrera's truck, which had been backed into the driveway. Ballesteros's blood stained the tailgate. Ballesteros's and Barrera's blood stained the steering wheel. Drag marks smeared the driveway. At or around 10:40 p.m., A.J. heard the truck leave but did not hear Perez come into the house. Surveillance footage showed a truck stopping at 10:46 p.m. near the gate of the United States Army Reserve Center, where Ballesteros's half-naked body would be discovered the following morning. Surveillance footage showed a vehicle stopping at 11:03 p.m. in an alley near the intersection of Tuolumne Street and B Street, where law enforcement would retrieve the mattress, bedding, and clothes stained with

Ballesteros's blood and a wallet containing Ballesteros's state identification card. Inside the garage, the bed was conspicuously missing its mattress, Ballesteros's blood stained a nearby wall, and Barrera's fingerprints were lifted. The autopsy revealed Ballesteros was choked with a ligature and stabbed 57 times with a single-edge blade. There was one defense wound: an incised wound on the left forearm. Abrasions on the back of the body were consistent with dragging.

From this evidence, a rational trier of fact could conclude Ballesteros was attacked in the garage by two individuals, one of whom was Barrera,[12] on the night of September 18, 2012. One choked Ballesteros with a ligature while the other fatally stabbed him.[13] Ballesteros was then stripped to his underwear and, under the cover of darkness, dragged across the driveway and loaded onto the bed of Barrera's truck, along with the bloodstained mattress, bedding, and clothes. The perpetrators drove to the Army Reserve Center, dumped Ballesteros's body, drove to the alley near the intersection of Tuolumne Street and B Street, and dumped the mattress, bedding, and clothes. A rational trier of fact could also conclude the murder was willful, deliberate, and premeditated. The crime involved not only a blade but also a ligature. (See *People v. Hovarter* (2008)

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**12** We point out Barrera does not dispute his culpability on appeal.

**13** Perez suggests she cannot be convicted because the evidence did not establish she was the one who stabbed Ballesteros. Although the record does not precisely demonstrate which defendant choked Ballesteros and which defendant stabbed him, both the choking and the stabbing were proximate causes of Ballesteros's death. (See *People v. Sanchez* (2001) 26 Cal.4th 834, 847 [" ' "When the conduct of two or more persons contributes concurrently as the proximate cause of the death, the conduct of each is a proximate cause of the death if that conduct was also a substantial factor contributing to the result. A cause is concurrent if it was operative at the time of the death and acted with another cause to produce the death." ' " italics omitted]; see also *People v. McCoy* (2001) 25 Cal.4th 1111, 1120 ["[I]n a stabbing case, one person might restrain the victim while the other does the stabbing. . . . [B]oth participants would be direct perpetrators as well as aiders and abettors of the other."].) "It is proximate causation, not direct or actual causation, which together with the requisite mental state determines the defendant's liability for murder." (*People v. Canizalez* (2011) 197 Cal.App.4th 832, 845.)

44 Cal.4th 983, 1020 [ligature use deliberate by nature]; *People v. Combs* (2004) 34 Cal.4th 821, 851 [use of multiple weapons indicative of deliberation and premeditation].) That there was but a single defense wound on Ballesteros's left forearm suggested the choking rendered Ballesteros mostly defenseless and susceptible to knife strikes. This manner of killing " 'supports the inference of calculated design to ensure death, rather than an unconsidered "explosion" of violence.' [Citation.]" (*People v. Steele* (2002) 27 Cal.4th 1230, 1250; see *People v. Pride* (1992) 3 Cal.4th 195, 215, 250 [infliction of 69 stab wounds consistent with premeditated killing].) The perpetrators then dumped the deceased in one location and the bloody mattress, bedding, and clothes in another, all in the middle of the night. Furthermore, before they disposed of the body, the perpetrators made sure to (1) remove most of Ballesteros's clothing, which accelerated the corpse's exposure to the elements and, in fact, thwarted the forensic pathologist's attempt to determine the time of death; and (2) take the wallet, which contained proof of identification. (See *People v. Wattie* (1967) 253 Cal.App.2d 403, 409 [deliberation and premeditation may be inferred from the condition of the deceased's body, the means of disposing the body, and efforts to prevent identification].)

On appeal, Perez denies being involved in Ballesteros's death. However, we believe a rational trier of fact could find she was the second perpetrator. In cases in which evidence of a perpetrator's identity is circumstantial, evidence of motive is especially relevant to resolve doubt. (*People v. Argentos* (1909) 156 Cal. 720, 726; *People v. Wright* (1904) 144 Cal. 161, 164; see *People v. Morales* (1979) 88 Cal.App.3d 259, 264 ["It is for the jury to determine whether [evidence] tends to establish a motive for commission of a crime and thus connect defendant with such a commission."].) Here, Perez knew Ballesteros and, starting in June 2012, rented her home's detached garage to him. Subsequently, federal marshals frequented Perez's residence to contact Ballesteros. A local television station's newscast identified Ballesteros as a sex offender and featured video footage taken during one of the marshals' aforementioned visits of Ballesteros and

Perez. Once Perez was informed about the newscast, she told Ballesteros to move out. She was unhappy "being on the camera" and angered "a little bit" by community members who persistently questioned whether she still harbored "that child molester." On September 14, 2012, roughly two weeks after he seemingly moved out, Ballesteros returned to the house. He left that night only after Perez fed him, cut his hair, clipped his nails, ironed his clothes, loaned him more clothes, and let him use the shower. A trier of fact could reasonably deduce Ballesteros became a nuisance to Perez and she no longer wanted him on the premises. On the afternoon of September 18, 2012, Ballesteros came back to the residence uninvited and reoccupied the garage. A trier of fact could reasonably deduce Perez learned Ballesteros was back in the garage without consent.

Contrary to Perez's claim, a reversal is not warranted simply because she and other witnesses offered conflicting testimonies on what transpired. The resolution of factual conflicts and inconsistencies is the exclusive province of the jury. (*People v. Solomon* (2010) 49 Cal.4th 792, 818; *People v. Young* (2005) 34 Cal.4th 1149, 1181; see *Stromerson v. Averill* (1943) 22 Cal.2d 808, 814-815 ["Inconsistencies only affect the credibility of the witness or reduce the weight of his testimony and it was for the trier of the fact to weigh the evidence and determine his credibility."].) "[I]t is not a proper appellate function to reassess the credibility of the witnesses." (*People v. Jones* (1990) 51 Cal.3d 294, 314-315; accord, *Brady, supra,* 50 Cal.4th at p. 564.) Here, the jury, by its guilty verdict, necessarily rejected the conflicting testimonies. Moreover, a reversal is not warranted simply because "the circumstances might also reasonably be reconciled with a contrary finding . . . ." (*Tripp, supra*, 151 Cal.App.4th at p. 955.) Thus, we conclude any rational jury could find Perez guilty beyond a reasonable doubt of first degree murder.

## II. The trial court properly instructed the jury on flight.

a. *Background*.

Upon the prosecution's request and over defendants' objections, the trial court read CALCRIM No. 372 (Defendant's Flight) to the jury:

> "If a defendant fled immediately after the crime was committed, or after he or she was accused of committing a crime, that conduct may show he or she was aware of his or her guilt. If you conclude that a defendant fled, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled cannot prove guilt by itself."

In summation, the prosecutor, argued:

> "[Defendants] sprang upon [Ballesteros] with their plan . . . . [D]efendant[s] fled immediately after the crime. Didn't hang around. They left. They left, because they were aware of guilt."

b. *Standard of review*.

"A claim of instructional error is reviewed de novo." (*People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 759, citing *People v. Guiuan* (1998) 18 Cal.4th 558, 569-570.)

c. *Analysis*.

"In any criminal trial or proceeding where evidence of flight of a defendant is relied upon as tending to show guilt, the court shall instruct the jury substantially as follows: [¶] The flight of a person immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not sufficient in itself to establish his guilt, but is a fact which, if proved, the jury may consider in deciding his guilt or innocence. The weight to which such circumstance is entitled is a matter for the jury to determine." (§ 1127c; see *People v. Hill* (1967) 67 Cal.2d 105, 120 ["[T]he giving of an instruction on flight in language which varies slightly from that of section 1127c is not error."]; *People v. Paysinger* (2009) 174 Cal.App.4th 26, 29-32 [upholding CALCRIM No. 372].)

" 'In general, a flight instruction "is proper where the evidence shows that the defendant departed the crime scene under circumstances suggesting that his movement was motivated by a consciousness of guilt." [Citations.]' " (*People v. Cage* (2015) 62 Cal.4th 256, 285; see *People v. Richardson* (2008) 43 Cal.4th 959, 1020 ["The evidentiary basis for the flight instruction requires sufficient, not uncontradicted, evidence."].) " ' " '[F]light requires neither the physical act of running nor the reaching of a far-away haven. [Citation.] Flight manifestly does require, however, a purpose to avoid being observed or arrested.' " [Citation.] "Mere return to familiar environs from the scene of an alleged crime does not warrant an inference of consciousness of guilt [citations], but the circumstances of departure from the crime scene may sometimes do so." ' [Citation.]" (*People v. Cage*, *supra*, at p. 285, italics omitted; see *People v. Mason* (1991) 52 Cal.3d 909, 941 ["[T]he facts of each case determine whether it is reasonable to infer that flight shows consciousness of guilt."].)

In the instant case, substantial evidence demonstrated Perez and Barrera murdered Ballesteros in the garage sometime before 9:30 p.m. Sometime before 10:30 p.m., under the cover of darkness and while the other inhabitants of 117 East Stanislaus Street were sleeping, Perez and Barrera loaded Ballesteros's body, mattress, bedding, and clothing, onto Barrera's truck and left the property. Surveillance footage confirmed defendants dumped the body and bloody items at 10:46 p.m. and 11:03 p.m., respectively. The circumstances of defendants' departure from the crime scene "logically permit[] an inference that [their] movement was motivated by guilty knowledge." (*People v. Turner* (1990) 50 Cal.3d 668, 694.)

Alternatively, Barrera argues: "Even if the instruction were factually supported, it is error to give a cautionary instruction on flight when it is objected to by the defense, as it was here." However, section 1127c unequivocally "makes *mandatory* the giving of an instruction on flight where evidence of a defendant's flight is relied upon as tending to show guilt . . . ." (*People v. Cannady* (1972) 8 Cal.3d 379, 391, italics added, fn.

omitted; accord, *People v. Richardson*, *supra*, 43 Cal.4th at p. 1020; *People v. Howard* (2008) 42 Cal.4th 1000, 1020.)

## III. The trial court had no obligation to instruct the jury on voluntary manslaughter as a lesser included offense.

a. *Background*.

At the jury instruction conference, both Perez's trial attorney and Barrera's trial attorney requested CALCRIM No. 570 (Voluntary Manslaughter: Heat of Passion – Lesser Included Offense):

> "I'm going to argue that Ms. Perez didn't do it, but . . . if the jury doesn't buy that argument, . . . they could find it was as a result of the heat of passion largely based on the overkill that was . . . handed out to Mr. Ballesteros[,] the 58 stab wounds, and the . . . severity of some of the stab wounds indicate that there was a tremendous burst of passion that was being felt by whoever it was that was delivering the stab wounds . . . . [¶] . . . [¶]
>
> ". . . [T]here is no evidence whatsoever . . . other than what might be inferred from the 58 stab wounds. Beyond that, since we have no one who saw this man being killed, no one who saw the attend[ant] circumstances immediately leading up to the killing, we really have no evidence at all concerning the killer or killers' state of mind at the time that it happened. . . . I would say there's as much evidence to justify heat of passion as there is to justify malice aforethought. . . . [¶] . . . [¶]
>
> ". . . The jury can also infer that there was some sort of argument . . . between the two codefendants and Mr. Ballesteros . . . based on the [prosecutor]'s construction of the evidence that Mr. Barrera and Ms. Perez left together. The jury could infer they left together for the purpose of talking it over with Mr. Ballesteros, and that an argument ensued and that he was killed as a result of that argument."

The court rejected the request.

b. *Standard of review*. (See *ante*, at p. 16.)

c. *Analysis*.

" ' "It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the

evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case." [Citation.] That obligation has been held to include giving instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], but not when there is no evidence that the offense was less than that charged. [Citations.]' " (*People v. Breverman* (1998) 19 Cal.4th 142, 154 (*Breverman*).) "[T]he existence of '*any* evidence, no matter how weak' will not justify instructions on a lesser included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is 'substantial enough to merit consideration' by the jury. [Citations.] 'Substantial evidence' in this context is ' "evidence from which a jury composed of reasonable [persons] could . . . conclude[]" ' that the lesser offense, but not the greater, was committed. [Citations.]" (*Id.* at p. 162.)

" 'Murder is the unlawful killing of a human being with malice aforethought. [Citation.] A defendant who commits an intentional and unlawful killing but who lacks malice is guilty of . . . voluntary manslaughter. [Citation.]' [Citation.] Generally, the intent to unlawfully kill constitutes malice. [Citations.] 'But a defendant who intentionally and unlawfully kills lacks malice . . . when the defendant acts in a "sudden quarrel or heat of passion" . . . .' [Citation.] Because heat of passion . . . reduce[s] an intentional, unlawful killing from murder to voluntary manslaughter by negating the element of malice that otherwise inheres in such a homicide [citation], voluntary manslaughter . . . is considered a lesser necessarily included offense of intentional murder [citation.]" (*Breverman, supra,* 19 Cal.4th at pp. 153-154, italics & fn. omitted.)

"An intentional, unlawful homicide is 'upon a sudden quarrel or heat of passion' [citation], and is thus voluntary manslaughter [citation], if the killer's reason was actually obscured as the result of a strong passion aroused by a 'provocation' sufficient to cause an ' "ordinary [person] of average disposition . . . to act rashly or without due

deliberation and reflection, and from this passion rather than from judgment." ' [Citations.]" (*Breverman*, *supra*, 19 Cal.4th at p. 163; see *People v. Steele* (2002) 27 Cal.4th 1230, 1252 ["The heat of passion requirement for manslaughter has both an objective and a subjective component. . . . The defendant must actually, subjectively, kill under the heat of passion. . . . But the circumstances giving rise to the heat of passion are also viewed objectively."].) "The provocation which incites the defendant to homicidal conduct in the heat of passion must be caused by the victim [citation], or be conduct reasonably believed by the defendant to have been engaged in by the victim. [Citations.]" (*People v. Lee* (1999) 20 Cal.4th 47, 59.) " ' "[N]o specific type of provocation [is] required . . . ." ' [Citation.] Moreover, the passion aroused need not be anger or rage, but can be any ' " '[v]iolent, intense, high-wrought or enthusiastic emotion' " ' [citation] other than revenge [citation]. 'However, if sufficient time has elapsed between the provocation and the fatal blow for passion to subside and reason to return, the killing is not voluntary manslaughter . . . .' [Citation.]" (*Breverman*, *supra*, at p. 163; see *People v. Gingell* (1931) 211 Cal. 532, 545 ["[T]he 'cooling time' to be considered [i]s the time within which an ordinarily reasonable man would cool . . . ."].)

Adequate heat of passion must be "affirmatively demonstrated." (*People v. Lee*, *supra*, 20 Cal.4th at p. 60.) Here, defendants assert "[t]he sheer number of times [Ballesteros] was stabbed suggests that the killer[s] acted under a homicidal rage rather than in a cool and calculated fashion." Indeed, Ballesteros was stabbed 57 times and cut once. Nevertheless, this fact in and of itself cannot justify the issuance of CALCRIM No. 570. These injuries "were consistent with *either* a provoked or a premeditated killing . . . ." (*People v. Pride*, *supra*, 3 Cal.4th at p. 250, italics added; see *id.* at p. 215 [murder victims stabbed 18 and 69 times, respectively].) As we previously discussed (see *ante*, at pp. 10-15), the circumstances overall were indicative of deliberation and premeditation. (See *Breverman*, *supra*, 19 Cal.4th at p. 162 [instruction on lesser included offense warranted where a reasonable fact finder could conclude the lesser

offense—but *not* the greater—was committed].) The record does not otherwise show defendants' passions were actually aroused immediately before the killing.[14] Therefore, the trial court had no obligation to instruct the jury on voluntary manslaughter as a lesser included offense.

## IV. The trial court had no obligation to instruct the jury on aider and abettor liability.

a. *Background*.

In summation, the prosecutor argued:

> "What did [defendants] do? They choked [Ballesteros] and they stabbed him. [¶] . . . [D]efendants committed an act. [¶] Now, what doesn't need to be proved is that David B[a]rrera was the choker and Patricia Perez was the stabber, or vice versa. All that needs to be proved is that they both participated. That was their intent. [¶] So the defendant[s] committed an act. One of them choked [Ballesteros]. Put that ligature around his neck, while the other stabbed him 58 times. . . . [¶] . . . [¶]
>
> "I mentioned . . . a minute ago . . . that they had a ligature. Whatever that was, a cord? A rope? . . . [¶] Somebody had to have a knife. . . . We have evidence of that. . . . [T]his was a two person job. If you do this, I'll do that. If you put that thing around [Ballesteros's] neck, I'll do this. I'll stab him. They came up with a plan. They found a knife. They found the cord. [¶] . . . [¶]
>
> ". . . [O]ne of them wrapped the cord around [Ballesteros's] neck, choking him. What did that cause [Ballesteros's] hands to do? Come up. That's why we have no defensive wounds on his hands. The other one began stabbing him 58 times. . . ."

b. *Standard of review*. (See *ante*, at p. 16.)

c. *Analysis*.

"Even without a request, a trial court is obliged to instruct on ' "general principles of law that are commonly or closely and openly connected to the facts before the court and that are necessary for the jury's understanding of the case" ' [citation], or put more

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**14** We need not, therefore, address the claimed provocations inciting passion.

concisely, on ' "general legal principles raised by the evidence and necessary for the jury's understanding of the case" ' [citation]. In particular, instructions delineating an aiding and abetting theory of liability must be given when such derivative culpability 'form[s] a part of the prosecution's theory of criminal liability and substantial evidence supports the theory.' [Citation.]" (*People v. Delgado* (2013) 56 Cal.4th 480, 488.)

In the instant case, the prosecutor did not argue for derivative culpability at all. (Contra, *People v. Delgado*, *supra*, 56 Cal.4th at pp. 487-488 [prosecutor relied on two theories—personal conduct and complicity—to prove asportation element of kidnapping for robbery].) Instead, he posited each defendant engaged in conduct that proximately caused Ballesteros's death: one incapacitated Ballesteros by choking him with a ligature while the other simultaneously stabbed Ballesteros multiple times. (See *People v. Sanchez*, *supra*, 26 Cal.4th at p. 847.) Although the choker did not deliver the fatal blows, he or she was still liable as a direct perpetrator. (See *People v. McCoy*, *supra*, 25 Cal.4th at p. 1120.) Hence, the trial court had no obligation to instruct the jury on aider and abettor liability.

## V. The trial court failed to advise defendants and obtain waivers of their *Boykin-Tahl* rights.

a. *Background.*

After the close of evidence but prior to closing arguments, the attorneys and the trial court engaged in the following colloquy:

> "MR. DUPRAS: . . . We had a discussion early on about prior convictions.
>
> "THE COURT: Yes. We haven't had a chance to take any admissions to the priors. So I would like to address that. [¶] Mr. Siegel and Mr. Schwab, how do you each wish to proceed on any of the priors[?] We've discussed that we would have taken a plea or admission plea, but admission to those priors set them aside if there is no conviction. How do you wish to proceed?

"MR. SIEGEL: I believe Ms. Perez is willing to enter into an admission of those priors outside the presence of the jury.

"THE COURT: Certainly . . . . And so, at this time, Ms. Perez, let me ask you, ma'am, do you admit or deny that in 2003 on or about the 9th of January, . . . you were convicted in . . . Fresno case number 662778-0 of what's referred to as Health and Safety Code [section] 11351, a felony, for which you were thereafter sentenced to state prison pursuant to [section] 667.5[, subdivision ](b) . . . [?] Do you admit or deny that[?]

"DEFENDANT PEREZ: Admit.

"THE COURT: Do you further admit or deny that in April of 2003 on the 7th[,] in a different case[,] [number] F03900840-0, another [section] 11351 of the Health and Safety Code[,] you were convicted and ultimately sentenced to state prison pursuant to [section] 667.5[, subdivision ](b)[?] Do you admit or deny that[?]

"DEFENDANT PEREZ: I admit.

"THE COURT: Counsel, you join in your client[']s] . . . admission to those two prior convictions?

"MR. SIEGEL: Yes, Your Honor.

"THE COURT: Mr. Schwab, your position on your client's priors?

"MR. SCHWAB: He'll admit outside the presence of the jury.

"THE COURT: And Mr. Barrera, again, in this case the admissions are now being recorded. They will only attach if there's any conviction. If there's not a conviction, they'll be set aside. And, obviously, they will not come into any kind of a play. [¶] In your case, sir, in 1991 do you admit or deny that you were convicted on the 6th of December, . . . of a charge of [section] 136.1[, subdivision ](c) in Fresno case [number] 446664-5, which is what's considered a strike prior pursuant to [sections] 667[, subdivisions ](b) through (i)[,] and 1170.12[, subdivisions ](a) through (d)[?] Do you admit or deny that[?] [¶] . . . [¶]

"DEFENDANT BARRERA: Yes. That's true. I admit.

"THE COURT: In 2005, . . . on the 7th of April, . . . do you admit or deny that you were convicted of an assault [under section] 245[, subdivision ](a)(1)[,] that caused great bodily injury, [section] 12022.7[, subdivision ](a)[,] in Fresno case [number] F04908638-0[,] which is

considered a strike prior pursuant to . . . [sections] 667[, subdivisions ](b) through (i)[,] and 1170.12[, subdivisions ](a) through (d)[?] Do you admit or deny that[?]

"DEFENDANT BARRERA: I admit.

"THE COURT: Do you further admit or deny, sir, that same conviction, the assault with the great bodily injury, is what's called a serious felony conviction within the meaning of . . . [s]ection 667[, subdivision ](a)(1)[?] Do you admit or deny that[?]

"DEFENDANT BARRERA: I admit.

"THE COURT: Lastly, for that very same conviction, do you admit or deny that you were sentenced to state prison pursuant to [section] 667.5[, subdivision ](b) . . . ?

"DEFENDANT BARRERA: I admit.

"THE COURT: Counsel, Mr. Schwab, do you join your client on the admission of his priors in this case?

"MR. SCHWAB: Yes, Your Honor.

"THE COURT: Any objections to these admissions, Mr. Dupras?

"MR. DUPRAS: No. Thank you, Your Honor.

"THE COURT: The admissions will be recorded. And as I've stated, it will only come into play if either defendant is convicted in his or her own case. Otherwise, they'll be set aside. . . ."

b. *Analysis.*

"A criminal defendant has the statutory right to have a jury determine the truth of an allegation that [he or she] suffered a prior felony conviction and prison term." (*People v. Vera* (1997) 15 Cal.4th 269, 272 (*Vera*), citing §§ 1025, 1158; accord, *People v. Mosby* (2004) 33 Cal.4th 353, 360 (*Mosby*); *People v. Belmares* (2003) 106 Cal.App.4th 19, 27-28; *People v. Thomas* (2001) 91 Cal.App.4th 212, 215.) "When trial is required by statute, . . . a defendant's due process trial rights . . . encompass the rights to remain silent and to confront witnesses." (*Mosby, supra,* at p. 360.)

"[B]efore accepting a criminal defendant's admission of a prior conviction, the trial court must advise the defendant and obtain waivers of (1) the right to a trial to determine the fact of the prior conviction, (2) the right to remain silent, and (3) the right to confront adverse witnesses." (*Mosby*, *supra*, 33 Cal.4th at p. 356, citing *In re Yurko* (1974) 10 Cal.3d 857, 863 (*Yurko*); see *Mosby*, *supra*, at pp. 359-360 [*Boykin-Tahl* admonitions].) "Proper advisement and waivers of these [*Boykin-Tahl*] rights in the record establish a defendant's voluntary and intelligent admission of the prior conviction." (*Mosby*, *supra*, at p. 356.) In cases "in which the defendant was not [expressly] advised of the right to have a trial on an alleged prior conviction, [the court] cannot infer that[,] in admitting the prior[,] the defendant has knowingly or intelligently waived that right as well as the associated rights to silence and confrontation of witnesses." (*Id.* at p. 362; see *id.* at p. 361; *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1421 ["silent-record" cases].)

Given our Supreme Court's recognition that "defendants have a due process right to receive a fair trial on the truth of prior prison term allegations" (*People v. Cross* (2015) 61 Cal.4th 164, 172 (*Cross*), citing *Vera*, *supra*, 15 Cal.4th at pp. 280, 281) and "due process requires 'adequate notice' and 'an opportunity to challenge the accuracy and validity of the[se] alleg[ations]' " (*Cross*, *supra*, at p. 173), we believe a trial court must likewise advise a defendant and obtain waivers of his or her *Boykin-Tahl* rights before accepting an admission of a prior prison term.

The Attorney General concedes the trial court failed to advise defendants of their *Boykin-Tahl* rights.[15] Nevertheless, she asserts defendants forfeited the issue on appeal. The Attorney General cites *Vera*, in which the Supreme Court held: "Absent an objection to the discharge of the jury or commencement of court trial, defendant is

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**15** Because this is a silent record case (see *Mosby*, *supra*, 33 Cal.4th at pp. 361-362), we need not address the Attorney General's contention defendants implicitly waived their *Boykin-Tahl* rights.

precluded from asserting on appeal a claim of ineffectual waiver of the statutory right to jury trial of prior prison term allegations." (*Vera*, *supra*, 15 Cal.4th at p. 278.) In a recent case, however, the high court circumscribed the ambit of this ruling:

> "[T]he defendant in *Vera* did not admit the truth of a prior conviction allegation. Instead, Vera waived his statutory right to a jury trial in favor of a bench trial. [Citation.] We said the denial of a jury trial on the prior prison term allegations raised no due process concerns because Vera 'does not assert, nor does the record in this case suggest, he was denied a fair trial.' [Citations.] Thus, the forfeiture in *Vera* arose from the defendant's acquiescence to a bench trial instead of a jury trial, not from his acquiescence to no trial at all.
>
> "Notably, our opinion in *Vera* strongly implied that defendants have a due process right to receive a fair trial on the truth of prior prison term allegations. [Citations.] Although post-*Yurko* case law has clarified that there is no constitutional right to a jury trial on a prior conviction allegation [citations], *Yurko* correctly concluded that 'an accused is entitled to a trial on the factual issues raised by a denial of the allegation of prior convictions . . . .' [Citation.] Indeed, it is well established that, while there is no single ' "best" recidivist trial procedure,' due process requires 'adequate notice' and 'an opportunity to challenge the accuracy and validity of the alleged prior convictions.' [Citations.] When a defendant forgoes this basic protection, his or her decision must be 'knowingly and intelligently made.' [Citation.] [An] unwarned stipulation to the truth of [a] prior conviction allegation does not merely waive a jury trial; it waives any trial at all.
>
> "In this context, we find instructive our recent decision in *People v. Palmer* (2013) 58 Cal.4th 110, which held that the defendant did not forfeit a claim that the trial court violated section 1192.5 by making an inadequate inquiry into the factual basis for his guilty plea. [Citation.] Palmer 'waived a preliminary hearing and probation report, and he acknowledged having discussed the charge and defenses with his counsel as well as his satisfaction with the advice he received. Defendant did not assert below that the procedure the trial court followed failed to satisfy section 1192.5, and he made no claim that the court or counsel should have identified a document or documents supporting the factual basis of the plea.' [Citation.] The Attorney General argued forfeiture, relying on *Vera*. But we said that *Vera*'s 'application in the present context would be inappropriate, given the prophylactic purpose behind the factual basis requirement, a purpose analogous to that behind the prophylactic

> advisements of applicable federal constitutional rights given a defendant before his or her guilty plea is taken, which "helps ensure that the 'constitutional standards of voluntariness and intelligence are met.' " [Citations.]' [Citation.] The same constitutional standards of voluntariness and intelligence apply when a defendant forgoes a trial on a prior conviction allegation. [Citation.] Thus, just as Palmer could not forfeit his claim that the trial court should have ensured his plea was voluntary and knowing by inquiring into its factual basis, [a defendant] cannot forfeit his claim that the trial court should have ensured his stipulation was voluntary and knowing by advising him of his right to 'a fair determination of the truth of the prior [conviction] allegation[].' [Citation.]" (*Cross, supra,* 61 Cal.4th at pp. 172-173, italics omitted.)

In view of *Cross*, we reject the Attorney General's argument for forfeiture.

Given the absence of *Boykin-Tahl* admonitions, we conclude defendants' admissions of prior convictions and prison terms were invalid. (*People v. Stills* (1994) 29 Cal.App.4th 1766, 1771.)

## DISPOSITION

The trial court's true findings as to the allegations of Barrera's two prior "strike" convictions, his prior serious felony conviction, and his prior prison term and Perez's two prior prison terms are reversed. The cause is remanded for retrial on these allegations. In all other respects, the judgments are affirmed.[16]

_____
DETJEN, Acting P.J.

WE CONCUR:

_____
FRANSON, J.

_____
PEÑA, J.

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[16] Because we are remanding this case for further proceedings with respect to the special allegations, we do not direct correction of the minute orders at this time. (See *ante*, fn. 2.)